



Fact Sheet, January 2009

Preventing Toxic Substances in Packaging

Introduction

The Department of Toxic Substances Control (DTSC) prepared this fact sheet to describe the laws and requirements for reducing and eliminating heavy metals in manufactures' and distributors' packaging. The new approach addresses the pollution problem at the source rather than regulating a material when it becomes a waste. DTSC created this fact sheet to introduce you to the requirements and outline exemptions to the law and to explain the required reporting. You should consult the actual laws to be sure that you are complying.

Consumer goods packaging makes up a significant portion of waste going to the nation's municipal solid waste landfills. Packaging containing toxic substances, especially heavy metals lead, cadmium, mercury and hexavalent chromium, can release those poisonous or dangerous substances, contaminating the soil and groundwater surrounding the landfill. To address this problem, the California Legislature passed the Toxics in Packaging Prevention Act, also known as Assembly Bill [AB 455](#) (2003). That law has been further amended by three other bills, [AB 2021](#) (2004), effective January 1, 2006, [SB 774](#) (2007), effective January 1, 2008, and [AB 2901](#) (2008), effective January 1, 2009. The intent of these laws is to reduce the toxicity (the degree toxins can have an effect on humans or animals) in packaging without discouraging the use of recycled materials in packaging production.

These laws are based on a national model. Many other states have passed similar legislation since the 1990s. Since most packaging is manufactured for nationwide distribution, many packaging manufacturers and suppliers have already taken steps to obey similar laws in other states.

DTSC is charged with enforcing the requirements of the law that are found in the [Health and Safety Code \(Health & Saf. Code\), division 20, chapter 6.5, article 10.4 \(beginning with §25214.11\)](#).

What is the Toxics in Packaging Prevention Act?

The law bans selling or promoting packaging that contains one or more specified heavy metals: lead, cadmium, mercury, or hexavalent chromium, if the metals have been *intentionally introduced* during manufacture or distribution. The law further restricts the *incidental total concentration of the regulated metals present in a package component to less than 100 parts per million (ppm)* by weight. Recent changes to the law in 2007 and 2008 include:





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- Clarification of some definitions;
- Adding restrictions regarding applied ceramic labels;
- Adding protection for retailers who unknowingly have products in packaging that is not in compliance;
- Adding penalties for intentional sale of non-compliant packaging; and
- Allowing for DTSC to conduct inspections and sampling.

This is just a brief overview, and is not inclusive of all the changes. Please [read the law](#) to understand all of the changes and how they affect you.

The law also allows for certain packaging to qualify for one or more specified exemptions, described in the next few pages of this fact sheet.

- A **packaging component** means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives.
- **Intentional introduction** means the act of deliberately utilizing a regulated metal in the formation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.
- **Incidental presence** means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

Why are lead, cadmium, mercury, and hexavalent chromium being targeted?

Current scientific evidence indicates that lead, cadmium, mercury, and hexavalent chromium can present serious health risks.

While exposure to these metals may be a health risk, these metals are often found in inks, labels, dyes, pigments, adhesives, stabilizers, and other packaging additives. The Legislature passed the Toxics in Packaging Prevention Act to restrict the use of these metals to further protect human health and the environment.

Is any packaging exempt from this law?

Several types of packaging are exempt. If you are a manufacturer or supplier and claiming an exemption, you must prepare, keep on file, and biennially update the required information pertaining to the packaging. Please read Health & Saf. Code, §25214.14 for more information.





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Exemptions from the Toxics in Packaging Laws:

- Packaging that is marked with a date code indicating that it was manufactured prior to January 1, 2006.
- Packaging in which a regulated metal is added to comply with health and safety requirement of a federal or state law.
- Packaging with no intentionally introduced regulated metals and that exceeds the concentration limit solely because of adding a recycled material.
- Packaging that is reused and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration levels .
- Packaging that has a controlled distribution and reuse and contains no intentionally introduced regulated metals but exceeds the applicable maximum concentration levels.
- Packaging that is a glass or ceramic package with a vitrified label (one that is applied with intense heat into or onto the package). Glass or ceramic packaging containing mercury is not eligible for this exemption.
- Packaging that has a regulated metal added to it for which there is no feasible alternative.

There are specific requirements for each exemption and some exemptions expire on January 1, 2010. Please refer to Health & Saf. Code, §25214.15 for these additional requirements.

How is compliance assured?

After January 1, 2006, manufacturers and suppliers of packaging are required to self-certify in a written statement that their packaging meets the requirements of the Toxics in Packaging Prevention Act. This is called a Certificate of Compliance. Manufacturers and suppliers must provide the buyer of packaging or packaging components with the Certificate of Compliance.

If the packaging is exempt, the Certificate of Compliance must state the reason for the exemption (Health & Saf. Code, §25214.14). *A manufacturer or supplier who is claiming an exemption must submit a copy of the Certificate of Compliance to DTSC* by mailing a copy to:

DTSC
Attention: Toxics in Packaging, MS-11A
P.O. Box 806
Sacramento, California, 95812-0806

A manufacturer or supplier who is not claiming an exemption does not need to send a copy to DTSC. It does, however, need to keep the Certificate of Compliance on file and provide it to DTSC upon request.





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Manufacturers and suppliers must keep the Certificate of Compliance on file for as long as the packaging is in use. They must issue a new Certificate of Compliance any time they change or create new packaging and must provide the new Certificate of Compliance to the buyer, and, if claiming an exemption, to DTSC. DTSC is required to provide copies of Certificates of Compliance to members of the public upon request, excluding any information that you identify as a trade secret, as defined in Health & Saf. Code, §25173.

Important: *When submitting the Certificate of Compliance to DTSC, the manufacturer or supplier must identify any information in the certificate that is proprietary in nature, including any trade secrets.* DTSC will keep confidential any information that the manufacturer or supplier has identified as a trade secret and which DTSC agrees is a trade secret. The Certificate of Compliance is NOT a trade secret.

How will this law be enforced?

DTSC enforces the law through extensive inspection, records review, and enforcement authority that can result in administrative (Health & Saf. Code, §25187) or civil penalties (Health & Saf. Code, §25189). A toll-free telephone number (1-800-698-6942) is available to the public to report information about violations of laws or regulations administered by DTSC.

Additional Information

For more information about Toxics in Packaging, please visit our website at:

<http://www.dtsc.ca.gov/ToxicsInPackaging/>

Our site includes a more general fact sheet, specific information for Manufacturers, Suppliers, and Purchasers, and links to other sites. We also maintain an email list (ListServ) that you may sign up for, so that anyone may receive updates from DTSC regarding Toxics in Packaging.

If you have questions, you can reach us by:

Email: tipinfo@dtsc.ca.gov

Telephone: (916) 322-4819

If you would like more information on toxics in packaging, including other states that have these laws, please visit the Toxics in Packaging Clearinghouse. California is a member state. Their phone number is (802) 254-8911, and their website is at <http://www.toxicsinpackaging.org>.

